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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,552	03/04/2002	Robert J. Macomber	P 279036	5327
909	7590	07/20/2006	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			HYUN, PAUL SANG HWA	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	

1743

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/086,552

Applicant(s)

MACOMBER, ROBERT J.

Examiner

Paul S. Hyun

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

REMARKS

Claims 1-8 and 10-14 are currently pending. Applicant amended claims 1, 2, 10 and 12. Consequently, the scope of all pending claims have been changed.

With regards to Applicant's response to the written restriction requirement dated January 5, 2006, Applicant's arguments have been fully considered, but they are not persuasive. As mentioned above, Applicant amended the claims such that the scope of the claims have been changed. Specifically, the method claims now recite the step of drawing a sample into filaments stored in a storage device. The addition of said method step to the method claims distinctly distinguishes claims 1-8 from claims 10-14, as indicated in the restriction requirement. Furthermore, contrary to Applicant's argument, the limitations added to the method claims have not been searched since they were entered after the first Office action was mailed. For these reasons, it is the Office's stance that the restriction is proper and claims 10-14 are withdrawn from further consideration by the Examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1-5, 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Marino (US 6,132,684) in view of Emmitt (US 4,124,122).

Art Unit: 1743

Marino discloses a test tube rack 100 comprising three plates (102, 104 and 106) supported by legs 115 and pins 120 and an actuating handle assembly 144. Each plate comprises machined holes 108, and the corresponding holes of the plates are configured to align with one another (see FIG 2). Plate 106 is also capable of shifting in a horizontal direction with respect to the other plates to provide a means to secure the tubes placed therein (see claim 1). When an actuating handle 154 is moved into a horizontal engaging position, plate 106 shifts and firmly secures the test tubes 184 in their corresponding tube accommodating holes 114 (see lines 35-42, col. 7). The actuating handle assembly 144, which supports the three plates and facilitates the horizontal movement of plate 106 (see lines 47-57, col. 6), is spring biased (see Figs. 10-12) and adjustable by adjusting the positions of blocks 146 (see lines 32-40, col. 6).

Although the reference does not specifically disclose that the rack is adapted to store the different types of filaments recited in the claims, given that the diameter of the holes of the rack disclosed by Marino is larger than the diameter of a "filament" as construed by the Specification of the instant application, it appears that the rack is dimensioned to accept a filament and permit unrestricted passage of a filament through the holes of the rack.

The rack disclosed by Marino differs from the claimed invention in that the reference does not disclose that the holes are chamfered.

Emmitt discloses a test tube rack adapted to accommodate test tubes. The surface defining each hole of the test tube rack comprises a groove in which is disposed

Art Unit: 1743

an O-ring. The O-ring is adapted to secure the test tubes within the rack by frictionally engaging the test tubes (see Abstract).

In light of the disclosure of Emmitt, it would have been obvious to one of ordinary skill in the art to chamfer the holes of the rack disclosed by Marino so that they would be able to accommodate O-rings that can frictionally engage the test tubes.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marino in view of Emmitt as applied to claim 1, and further in view of De Graaff et al. (US 6,146,594).

Neither Marino nor Emmitt specifically disclose the arrangement of the holes of a test tube rack. However, the plate patterns recited in the claim are well-known in the art. De Graaff et al. disclose that the Society of Biomolecular Screening has standardized well plate arrangements on a variety of plate formats. Some established arrangements include 96 and 384 well plate designs (see lines 15-25, col. 1).

It would have been obvious to one of ordinary skill in the art to provide 96 or 384 holes in an array format to the plates of the modified Marino/Emmitt rack so that a large number of test tubes can be accommodated.

Response to Arguments

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection. Applicant amended claims 1, 2, 10 and

Art Unit: 1743

12, and the scope of all pending claims have been changed. Specifically, all the claims now recite holes having a chamfered surface.

It should also be noted that the device disclosed by Marino is "dimensioned to accept a filament" since the diameter of the openings of the Marino device is larger than the diameter of a "filament" as indicated by Applicant in the REMARKS to the first Office action. It appears that any hole that is larger than the diameter of the filament recited in the claims is "dimensioned to accept a filament".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Art Unit: 1743

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH
7/12/06


YELENA GAKH
PRIMARY EXAMINER